

Message Text

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14
ACTION EUR-12

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SUBJECT: US PROPOSAL ON TAX CASE MORATORIUM

1. US GROUP, HEADED BY ALLAN WOLFF OF STR AND TREASURY DEPUTY ASSISTANT SECRETARY PETER SUCHMAN, MET WITH COMMISSION OFFICIALS (FIELDING, LOERKE, PHAN VAN PHI AND BESELER OF DG-I) DECEMBER 3 TO PRESENT US PROPOSAL ON A MORATORIUM COVERING OUTSTANDING TAX PROBLEMS CONCERNING THE US AND EC. SUCHMAN INDICATED THE DANGER THAT THE USG MAY WELL LOSE THE ZENITH CASE AT THE CUSTOMS COURT LEVEL, THAT SUSPENSION OF CUSTOMS LIQUIDATION WILL ENSUE THEREAFTER AND THAT A SUMMARY JUDGMENT ON STEEL VAT REBATES, WITH A RESULTANT SUSPENSION OF LIQUIDATIONS, WOULD THEN BE LIKELY SOME MONTHS THEREAFTER. FURTHERMORE, OTHER INDUSTRIES ARE LIKELY TO SEEK LEGAL MEANS TO OBTAIN SIMILAR ACTION ON A VARIETY OF OTHER PRODUCTS SUBJECT TO VAT REBATES. THE ONLY VIABLE ALTERNATIVE THE USG PRESENTLY SEES TO THE RESULTANT STATE OF CHAOS IN TRADE WOULD INVOLVE LEGISLATION. WE HAVE CONSULTED WITH STAFF MEMBERS OF THE WAYS AND MEANS AND SENATE FINANCE COMMITTEES. IT IS UNLIKELY THAT CONGRESS WOULD MOVE

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RAPIDLY TO PROVIDE LEGISLATION ALLOWING US TO AVOID

SUSPENSIONS AS MANY CONGRESSMEN, INCLUDING CHAIRMEN LONG AND ULLMAN HAVE LONG CONSIDERED THE VAT REBATE AS A TRADE INJUSTICE. MOREOVER, THEY WOULD BE RELUCTANT TO INTERVENE AGAINST A US INDUSTRY SEEKING JUDICIAL RELIEF. THE ADMINISTRATION ACCORDINGLY WOULD NEED TO CONSTRUCT AN ACCEPTABLE PACKAGE IN ORDER TO GET EXPEDITED APPROPRIATE LEGISLATION. ONE POSSIBILITY WAS TO USE SECTION 102 OF THE TRADE ACT IF AN AGREEMENT COULD BE NEGOTIATED.

2. SUCHMAN AND WOLFF THEN REVIEWED THE CONTENTS OF THE US PROPOSAL FOR SUCH A PACKAGE AS FOLLOWS:

(A) THE US AND THE EC WOULD AGREE THAT TAX PRACTICES AFFECTING TRADE WERE APPROPRIATE FOR NEGOTIATION IN THE MTN.

(B) WE WOULD AGREE ON A TWO YEAR MORATORIUM ON GATT ARTICLE XXIII COMPLAINTS ON COUNTERVAILING DUTY ACTIONS AGAINST THE DISC AND EUROPEAN TAX PRACTICES CONDEMNED BY THE GATT PANELS. WE WOULD NOT TAKE ACTION AGAINST THE EUROPEAN TAXES IF THE EC WOULD DO LIKEWISE ON THE DISC.

(C) NO SUSPENSION OF LIQUIDATION DURING THIS TWO YEARS WOULD TAKE PLACE PENDING A FINAL COURT JUDGMENT. (SUCHMAN NOTED THAT THE BEST ESTIMATE IN THE US IS THAT ON APPEAL HIGHER COURTS ARE LIKELY TO UPHOLD THE USG.)

3. US SIDE MADE IT CLEAR THAT WE REGARD THIS PROPOSAL AS A LEGITIMATE EFFORT TO GET AROUND A DIFFICULT MUTUAL PROBLEM, NOT AS A TROJAN HORSE TO GET BORDER TAX DISCUSSION IN THE MTN. ALTHOUGH THE ULTIMATE OUTCOME OF MTN DISCUSSION COULD NOT BE PREDICTED, WE UNDERSTAND THE STRENGTH OF THE COMMUNITY'S ATTACHMENT TO VAT AND WOULD NOT EXPECT THAT OUR PROPOSAL WOULD IN ANY WAY COMMIT THEM TO CHANGES IN THE VAT SYSTEM.

4. THE COMMISSION SIDE NOTED THAT OUR PROPOSAL, PARTICULARLY POINT CO, WOULD SEEM TO DRAW THE VAT SPECIFICALLY INTO QUESTION AS A QUID PRO QUO FOR AVOIDANCE OF DUTY SUSPENSION. AFTER A FEW MINUTES OF PRIVATE DISCUSSION, THE EC OFFICIALS RETURNED TO INDICATE THEIR ABSOLUTE REJECTION OF THE US LIMITED OFFICIAL USE

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PROPOSAL. THEY EXPRESSED THEIR BELIEF THAT THE ADMINISTRATION MUST MEET ITS INTERNATIONAL OBLIGATIONS BY DEFENDING THE ORIGINAL TREASURY DECISION ON VAT REBATES. THEY EMPHASIZED THEIR CONVICTION THAT THE VAT IS FULLY SANCTIONED IN INTERNATIONAL PRACTICE. THEY ALSO INDICATED THEY COULD NEVER SELL THE US PROPOSAL TO THE MEMBER STATES, EVEN IF THE COMMISSION ACCEPTED IT--WHICH IT DID NOT. THEY ALSO STATED THAT THEIR DECISION HAD BEEN APPROVED

AT HIGHER LEVELS IN THE COMMISSION WHICH CONSIDERS
THIS MATTER TO POSE AN EXTREMELY GRAVE THREAT TO US-
EC RELATIONS. HINTON

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